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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/669,187 | 09/25/2000 | Arthur M. Krieg | C1039/7035 (HCL/MAT) | 2999 |

7590 12/17/2001
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EXAMINER

MARTINELL, JAMES

| ART UNIT | PAPER NUMBER |
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1633

DATE MAILED: 12/17/2001

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/669,187

Applicant(s)

KRIEG ET AL.

Examiner

James Martinell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on December 27, 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-78, 80, 82, 83, 85-103, and 106 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claims 1-78, 80, 82, 83, 85-103, and 106 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.

- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____.

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Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-77, 85-94, and 98, drawn to methods of stimulating immune responses, classified in class 514, subclass 44.
- II. Claims 78, 80, 82, 83, 95, and 96, drawn to compositions comprising nucleic acids free of unmethylated CpG motifs, and is selected from T-rich nucleic acids, and TG nucleic acids, classified in class 536, subclass 22.1.
- III. Claim 99, drawn to compositions comprising nucleic acids that are T-rich or TG nucleic acids, classified in class 536, subclass 22.1.
- IV. Claim 100, drawn to compositions comprising nucleic acids that are either T-rich, TG nucleic acids, or C-rich nucleic acids, classified in class 536, subclass 22.1.
- V. Claim 101, drawn to specific sequences totaling 4668 different nucleic acid sequences, classified in class 536, subclass 22.1.
- VI. Claim 102, drawn to a specific oligonucleotide, classified in class 536, subclass 22.1.
- VII. Claim 103, drawn to a specific oligonucleotide, classified in class 536, subclass 22.1.
- VIII. Claim 106, drawn to an assay method, classified in class 435, subclass 29.

The inventions are distinct, each from the other because of the following reasons.

The compositions of each of Groups II-VII have uses other than in the methods of Group I; for example in affinity chromatography or as nucleic acid molecular hybridization probes. The methods of Groups I and VIII may be practiced independently of one another. The compositions of Group II are independent and distinct from the compositions of each of Groups III-VII because the overall base compositions and sequences are distinct. The method of Group VIII does not require the compositions of Group II. The compositions of Group III are independent and distinct from the compositions of each of Groups IV-VII because the overall base compositions and sequences are distinct. The method of Group VIII does not require the compositions of Group III. The compositions of Group IV are independent and distinct from the compositions of each of Groups V-VII because the overall base compositions and sequences are distinct. The method of Group VIII does not require the compositions of Group V. The

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compositions of Group V are independent and distinct from the compositions of each of Groups VI and VII because the overall base compositions and sequences are distinct. The method of Group VIII does not require the compositions of Group V. The compositions of Group VI are independent and distinct from the compositions of Group VII because the overall base compositions and sequences are distinct. The method of Group VIII does not require the compositions of Group VI. The method of Group VIII does not require the compositions of Group VII. The compositions of Groups II-VII have uses other than in the methods of Group VIII; for example in affinity chromatography or as nucleic acid molecular hybridization probes.

Claims 101-103 are drawn to nucleotides, nucleotide constructs, and/or methods requiring the use of nucleotides or nucleotide constructs that contain more than ten individual, independent, and distinct nucleotide sequences in alternative form. Accordingly, these claims are subject to restriction under 35 U.S.C. § 121 as outlined in 1192 O.G. 68 (November 19, 1996). This notice permits the examination of from one to ten independent and distinct nucleotide sequences in a single application based upon USPTO resources.

Applicant is required to select no more than ONE of the individual sequences for examination. The search of the no more than ONE selected sequence may include the complement of the selected sequence and, where appropriate, may include subsequences within the selected sequence (*e.g.*, oligomeric probes and/or primers).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their different classification and recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of

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inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Certain papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Art Unit 1633 at (703) 308-4242. The faxing of such papers must conform to the rules published in the Official Gazette, 1156 OG 61 (November 16, 1993).

Any inquiry concerning this Office action should be directed to J. Martinell at telephone number (703) 308-0296. The fax phone number for Examiner Martinell's workstation is (703) 746-5162. The examiner works a flexible schedule and can be reached by phone and voice mail. Alternatively, a request for a return telephone call may be e-mailed to james.martinell@USPTO.gov. Since e-mail may not be secure, it is suggested that information in such requests be limited to name, phone number, and the best time to return the call.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah R. Clark, can be reached at (703) 305-4051. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.


JAMES MARTINELL, PH.D.
SENIOR LEVEL EXAMINER